

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS

JOSEPH BOND, on behalf of himself and
others similarly situated,

Plaintiff,

vs.

FOLSOM INSURANCE AGENCY LLC,
CODY FOLSOM, and BERKSHIRE
HATHAWAY HOMESTATE COMPANIES

Defendants.

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Civil Action No. 1:24-cv-00075-MJT

**DEFENDANTS FOLSOM INSURANCE AGENCY LLC, AND CODY FOLSOM'S
ANSWER TO FIRST AMENDED COMPLAINT**

COMES NOW, Defendants Folsom Insurance Agency LLC and Cody Folsom (collectively, the "Folsom Defendants") and file this Answer to First Amended Complaint, and in support thereof would respectfully show the following:

NATURE OF ACTION

1. This paragraph sets forth allegations to which no response is required. To the extent a response is required, Folsom Defendants deny the allegations to the extent they allege or imply wrongdoing by Folsom Defendants or that Plaintiff has any viable claims against Folsom Defendants.
2. This paragraph sets forth allegations to which no response is required. To the extent a response is required, Folsom Defendants deny the allegations to the extent they allege or imply wrongdoing by Folsom Defendants or that Plaintiff has any viable claims against Folsom Defendants.
3. Folsom Defendants deny the allegations in this paragraph.

PARTIES

4. Folsom Defendants admit Plaintiff is an individual. Otherwise, Folsom Defendants are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations set forth in this paragraph.
5. Folsom Defendants admit the allegations in this paragraph.
6. Folsom Defendants admit the allegations in this paragraph.
7. Folsom Defendants deny the allegations in this paragraph.

JURISDICTION AND VENUE

8. Folsom Defendants are not challenging jurisdiction at this time.
9. Folsom Defendants are not challenging jurisdiction at this time.
10. Folsom Defendants deny the allegations in this paragraph.
11. Folsom Defendants are not challenging venue at this time. Otherwise, this paragraph sets forth allegations to which no response is required. To the extent a response is required, Folsom Defendants deny the allegations to the extent they allege or imply wrongdoing by Defendant or that Plaintiff has any viable claims against Folsom Defendants.

TCPA BACKGROUND

12. This paragraph references and cites statutory language to which no response is required. To the extent a response is required, Folsom Defendants deny the allegations to the extent they allege or imply wrongdoing by Folsom Defendants or that Plaintiff has any viable claims against Folsom Defendants.

13. This paragraph references and cites statutory language to which no response is required.

To the extent a response is required, Folsom Defendants deny the allegations to the extent they allege or imply wrongdoing by Folsom Defendants or that Plaintiff has any viable claims against Folsom Defendants.

14. This paragraph references and cites statutory language and history to which no response is

required. To the extent a response is required, Folsom Defendants deny the allegations to the extent they allege or imply wrongdoing by Folsom Defendants or that Plaintiff has any viable claims against Folsom Defendants.

15. This paragraph references and cites statutory language to which no response is required.

To the extent a response is required, Folsom Defendants deny the allegations to the extent they allege or imply wrongdoing by Folsom Defendants or that Plaintiff has any viable claims against Folsom Defendants.

16. This paragraph references and cites statutory language and history to which no response is

required. To the extent a response is required, Folsom Defendants deny the allegations to the extent they allege or imply wrongdoing by Folsom Defendants or that Plaintiff has any viable claims against Folsom Defendants.

FACTUAL ALLEGATIONS

17. Folsom Defendants admit the allegation in this paragraph to the extent it applies to them.

Otherwise, Folsom Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in this paragraph.

18. Folsom Defendants are without knowledge or information sufficient to form a belief as to

the truth of the allegations set forth in this paragraph.

19. Folsom Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in this paragraph.

20. Folsom Defendants deny the allegation in this paragraph.

21. Folsom Defendants deny the allegation in this paragraph.

22. Folsom Defendants deny the allegation in this paragraph.

23. Folsom Defendants deny the allegation in this paragraph.

24. Folsom Defendants deny the allegation in this paragraph.

25. Folsom Defendants deny the allegations in this paragraph.

26. Folsom Defendants deny the allegation in this paragraph.

27. Folsom Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in this paragraph.

28. Folsom Defendants deny the allegation in this paragraph.

29. Folsom Defendants deny the allegations in this paragraph.

30. Folsom Defendants deny the allegations in this paragraph.

31. Folsom Defendants deny the allegations in this paragraph.

32. This paragraph references and cites statutory language to which no response is required.

To the extent a response is required, Folsom Defendants deny the allegations to the extent they allege or imply wrongdoing by Folsom Defendants or that Plaintiff has any viable claims against Folsom Defendants

33. This paragraph references and cites statutory language and history to which no response is required. To the extent a response is required, Folsom Defendants deny the allegations to the extent they allege or imply wrongdoing by Folsom Defendants or that Plaintiff has any viable claims against Folsom Defendants.

34. This paragraph references and cites statutory language and history to which no response is required. To the extent a response is required, Folsom Defendants deny the allegations to the extent they allege or imply wrongdoing by Folsom Defendants or that Plaintiff has any viable claims against Folsom Defendants.
35. This paragraph references and cites statutory language and history to which no response is required. To the extent a response is required, Folsom Defendants deny the allegations to the extent they allege or imply wrongdoing by Folsom Defendants or that Plaintiff has any viable claims against Folsom Defendants.
36. This paragraph sets forth allegations to which no response is required. To the extent a response is required, Folsom Defendants denies the allegations to the extent they allege or imply wrongdoing by Folsom Defendants or that Plaintiff has any viable claims against Folsom Defendants.
37. Folsom Defendants are without knowledge or information to form a belief as to the truth of the allegations set forth in this paragraph.
38. Folsom Defendants deny the allegations in this paragraph.
39. Folsom Defendants deny the allegations in this paragraph.
40. This paragraph sets forth allegations to which no response is required. To the extent a response is required, Folsom Defendants denies the allegations to the extent they allege or imply wrongdoing by Folsom Defendants or that Plaintiff has any viable claims against Folsom Defendants.

41. This paragraph sets forth allegations to which no response is required. To the extent a response is required, Folsom Defendants denies the allegations to the extent they allege or imply wrongdoing by Folsom Defendants or that Plaintiff has any viable claims against Folsom Defendants.

42. Folsom Defendants are without knowledge or information to form a belief as to the truth of the allegations set forth in this paragraph.

43. This paragraph sets forth allegations to which no response is required. To the extent a response is required, Folsom Defendants denies the allegations to the extent they allege or imply wrongdoing by Folsom Defendants or that Plaintiff has any viable claims against Folsom Defendants.

44. Folsom Defendants deny the allegations in this paragraph.

45. Folsom Defendants deny the allegations in this paragraph.

46. Folsom Defendants are without knowledge or information to form a belief as to the truth of all the allegations set forth in this paragraph.

47. This paragraph references statutory language and history to which no response is required. To the extent a response is required, Folsom Defendants denies the allegations to the extent they allege or imply wrongdoing by Folsom Defendants or that Plaintiff has any viable claims against Folsom Defendants.

48. Folsom Defendants are without knowledge or information to form a belief as to the truth of all the allegations set forth in this paragraph.

49. Folsom Defendants deny the allegations in this paragraph.

50. Folsom Defendants deny the allegations in this paragraph.

51. Folsom Defendants deny the allegations in this paragraph.

52. Folsom Defendants deny the allegations in this paragraph.

53. Folsom Defendants deny the allegations in this paragraph.

CLASS ACTION ALLEGATIONS

54. This paragraph sets forth allegations to which no response is required. To the extent a response is required, Folsom Defendants denies the allegations to the extent they allege or imply wrongdoing by Folsom Defendants or that Plaintiff has any viable claims against Folsom Defendants.

55. Folsom Defendants deny the allegations in this paragraph.

56. Folsom Defendants deny the allegations in this paragraph.

57. This paragraph sets forth allegations to which no response is required. To the extent a response is required, Folsom Defendants denies the allegations to the extent they allege or imply wrongdoing by Folsom Defendants or that Plaintiff has any viable claims against Folsom Defendants.

58. Folsom Defendants deny the allegations in this paragraph.

59. This paragraph sets forth allegations to which no response is required. To the extent a response is required, Folsom Defendants denies the allegations to the extent they allege or imply wrongdoing by Folsom Defendants or that Plaintiff has any viable claims against Folsom Defendants.

60. Folsom Defendants deny the allegations in this paragraph.

61. This paragraph sets forth allegations to which no response is required. To the extent a response is required, Folsom Defendants denies the allegations to the extent they allege or imply wrongdoing by Folsom Defendants or that Plaintiff has any viable claims against Folsom Defendants.

62. This paragraph sets forth allegations to which no response is required. To the extent a response is required, Folsom Defendants denies the allegations to the extent they allege or imply wrongdoing by Folsom Defendants or that Plaintiff has any viable claims against Folsom Defendants.

63. This paragraph sets forth allegations to which no response is required. To the extent a response is required, Folsom Defendants denies the allegations to the extent they allege or imply wrongdoing by Folsom Defendants or that Plaintiff has any viable claims against Folsom Defendants.

64. This paragraph sets forth allegations to which no response is required. To the extent a response is required, Folsom Defendants denies the allegations to the extent they allege or imply wrongdoing by Folsom Defendants or that Plaintiff has any viable claims against Folsom Defendants.

65. This paragraph sets forth allegations to which no response is required. To the extent a response is required, Folsom Defendants denies the allegations to the extent they allege or imply wrongdoing by Folsom Defendants or that Plaintiff has any viable claims against Folsom Defendants.

66. Folsom Defendants are without knowledge or information to form a belief as to the truth of the allegations set forth in this paragraph.

67. This paragraph sets forth allegations to which no response is required. To the extent a response is required, Folsom Defendants denies the allegations to the extent they allege or imply wrongdoing by Folsom Defendants or that Plaintiff has any viable claims against Folsom Defendants.

68. Folsom Defendants are without knowledge or information to form a belief as to the truth of the allegations set forth in this paragraph.

FIRST CAUSE OF ACTION

**Violations of the Telephone Consumer Protection Act
47 U.S.C. 227(b) on behalf of the Robocall Class**

69. Folsom Defendants incorporate the foregoing responses as if fully set forth herein.

70. Folsom Defendants deny the allegations in this paragraph.

71. Folsom Defendants deny the allegations in this paragraph.

72. Folsom Defendants deny the allegations in this paragraph.

73. Folsom Defendants deny the allegations in this paragraph.

PRAYER FOR RELIEF

Folsom Defendants deny that Plaintiff, individually and on behalf of the class is entitled to the requested relief in this paragraph and subparagraphs A. through D.

JURY DEMAND

Folsom Defendants admit that Plaintiff has requested a trial by jury.

FOLSOM DEFENDANTS' AFFIRMATIVE DEFENSES

1. Plaintiff's First Amended Complaint fails to state a claim upon which relief can be granted.
2. Plaintiff's claims are barred in whole or in part by the doctrines of waiver, ratification, estoppel, and equitable estoppel.
3. Plaintiff's claims are barred in whole or in part by the doctrine of unclean hands.
4. Plaintiff's claims are barred in whole or in part to the extent he failed to mitigate his damages.
5. Plaintiff's claims are barred in whole or part because Defendant acted in compliance with all applicable rules, laws, and government regulations.

6. Plaintiff's claims are barred in whole or in part pursuant to 47 C.F.R. §64.1200(c)(2)(i)(A)-(E).
7. Plaintiff's claims are barred in whole or in part pursuant to 47 U.S.C. §227(c)(5)(c).
8. Plaintiff's claims are barred in whole or in part because Plaintiff was not charged for the ringless voicemail as required by the TCPA.
9. Plaintiff does not meet the class requirements of Rule 23 of the Federal Rules of Civil Procedure. Plaintiff cannot meet the requirements of numerosity, commonality, typicality, and adequate representation. Additionally, the putative class is not ascertainable by objective measures and common issues of law and fact and do not predominate over individualized inquires.
10. This is not a valid class action because the putative class members are not readily ascertainable.
11. This action cannot be maintained as a class action under Rule 23(b)(1) of the Federal Rules of Civil Procedure because: (a) Plaintiff is not adequate class representatives and cannot fairly and adequately protect the interests of the putative class; (b) Plaintiff's claims are not typical of the claims of other members of the putative class; (c) individual issues of law or fact predominate over any common question; (d) adjudication of separate actions by individual members of the putative class would not be dispositive of others' interests or establish incompatible standards of conduct for Defendant; (e) no other requirement for maintaining this action as a class have been satisfied; and, (f) the putative class is not properly defined or readily ascertainable. Consequently, any adjudication of any named Plaintiff's individual claims or any claim of any purported class member on the basis of generalized, class-wide proof will not satisfy the requirements of Rule 23 and would violate

Defendant's Due Process and other rights under the Texas and United States Constitutions.

12. This action cannot be maintained as a class action under Rule 23(b)(3) of the Federal Rules of Civil Procedure because: (a) Plaintiff is not adequate class representative and cannot fairly and adequately protect the interests of the putative class; (b) Plaintiff's claims are not typical of the claims of other members of the putative class; (c) individual issues of law or fact predominate over any common question; (d) a class action is not a superior method for fair and efficient adjudication of the purported controversy; (e) no other requirement for maintaining this action as a class have been satisfied; and, (f) the putative class is not properly defined or readily ascertainable. Further, adjudication of any named Plaintiff's individual claims or any claim of any purported class member will require individualized inquiry regarding injury, causation, and damages, such that imposition of liability or any award of damages or other relief against Defendant on the basis of generalized, class-wide proof will not satisfy the requirements of Rule 23 and would violate Defendant's Due Process and other rights under the Texas and United States Constitutions.

PRAYER

WHEREFORE PREMISES CONSIDERED, Defendants Folsom Insurance Agency LLC and Cody Folsom pray that Plaintiff take nothing by the claims asserted, that the lawsuit be dismissed with prejudice and on the merits, and that Folsom Defendants be awarded their attorney's fees and costs, and for any other relief to which they may be justly entitled to in law or in equity.

THOMPSON, COE, COUSINS & IRONS, L.L.P.

By: /s/ Jason R. Jobe

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served on 7th day of August, 2024, to all counsels of record.

By: /s/ Yesha P. Patel

Yesha P. Patel